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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1968

WALTER J. ABRAMS, ET AL.,
Plaintiffs-Appellants,

vs.

JOHN A. WIETHE, ET AL.,
Defendants-Appellees.

Appeal from the Supreme Court of Ohio

JURISDICTIONAL STATEMENT

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In The

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No. ——

WALTER J. ABRAMS, ET AL.,
Plaintiffs-Appellants,

vs.

JOHN A. WIETHE, ET AL.,
Defendants-Appellees.

Appeal from the Supreme Court of Ohio

JURISDICTIONAL STATEMENT

STATEMENT OF FACTS

On 12-5-67 Plaintiffs-Appellants filed a petition with appropriate bond in the Common Pleas Court of Hamilton County, Ohio, contesting the election of Defendant-Appellee, Donald P. Bennett, to the office of Mayor of the City of Cheviot, Ohio, in the general election held November 7, 1967. The petition as filed met all the requirements of Ohio Revised Code, section 3515.09 necessary to give the Court jurisdiction of the parties and subject matter, and service was had on all Defendants. As of 12-5-68 the case was properly before the Court. On 12-15-67 both of the defendants, Donald P. Bennett and the Hamilton County Board of Elections, filed answers

to the petition. On 12-20-68 the plaintiff-appellants filed a motion with the Court to take the depositions of defendant-appellee, Donald P. Bennett, and other witnesses necessary to plaintiff-appellants' case. This motion was set for hearing by the Court on 1-9-68.

On 1-9-68 Donald P. Bennett filed a motion to dismiss the petition of the plaintiff-appellants for the reason that "the Court does not have jurisdiction to hear this action." The trial Court sustained this motion "for the reason that the requirements of Section 3515.10 of the Revised Code, requiring that the matter be set for hearing not less than fifteen (15) nor more than thirty (30) days after the filing of the petition has not been complied with and that the Court therefore has no jurisdiction to hear the contest." On appeal the Ohio Supreme Court dismissed the appeal because, it said, "no substantial constitutional question exists herein."

The pertinent part of Ohio Revised Code, Section 3515.-10 which the trial Court relied upon in reaching its decision states: "The Court with which a petition to contest an election is filed shall fix a suitable time for hearing such contest, which shall be not less than fifteen nor more than thirty days after the filing of the petition. . . ."

QUESTION OF LAW PRESENTED

Does the action of the Court, dismissing an election contest where the Plaintiffs-Appellants have done all acts required of them by statute to cause the Court to obtain jurisdiction and have not acquiesced in any continuances or filed any dilatory pleadings for the sole reason that the Court failed to set the election contest within 30 days as prescribed by Section 3515.10 of the Ohio Revised Code, deprive Plaintiffs-Appellants of their rights under Section

2, Article 1 of the Bill of Rights of the Constitution of Ohio, 1851, and deprive them of equal protection of the law as guaranteed in the Fourteenth Amendment of the Constitution of the United States?

ARGUMENTS OF LAW

1. Plaintiffs-Appellants are not attacking Section 3515.-10 of the Revised Code in Ohio, per se. The pertinent part of Section 3515.10 around which this case revolves is quoted in pertinent part as follows:

> "The Court with which a Petition to contest an election is filed shall fix a suitable time for hearing such contest, shall not be less than fifteen (15) nor more than thirty (30) days after the filing of the Petition. . . ."

Defendant-Appellee, Donald P. Bennett, cited two cases to support his Motion To Dismiss filed in the Common Pleas Court of Ohio. They are *McCall* v. *Board of Education,* 169 O.S. 50, and *Jenkins* v. *Hughes, et al.,* 157 O.S. 186.

In *Jenkins* v. *Hughes* the Court found the following were the essential facts:

(1) Plaintiffs had filed dilatory pleadings; and

(2) Plaintiffs had acquiesced in the continuance of the proceedings; and

(3) Plaintiffs had failed to request the Court to fix a date for such hearing within the time required by statute and that a judgment to dismiss the contest for lack of prosecution for more than 100 days after the filing of the Petition will be upheld.

In the *McCall* case the following facts were found to exist:

(1) There was no service of summons on Defendants.
(2) No request to set the case for trial had been made by Plaintiffs.

In the *McCall* case the Supreme Court of Ohio said there was no service and the Court had no jurisdiction. We agree.

In the *Jenkins* case the Supreme Court of Ohio said that the acts of the contestors amounted to an act of dismissal and a lack of interest in prosecuting the case.

The Supreme Court of Ohio in both cases enunciated the general proposition that the public interest is best served in having an election contest heard and determined quickly and expeditiously.

The Supreme Court of Ohio said that the Plaintiffs-Contestors should have requested a hearing, under the circumstances in those cases.

In the *Jenkins* case Plaintiffs' acts were tantamount to dismissing the case. In the *McCall* case there was no service and the Court had never obtained jurisdiction. On the facts in the instant case, to suggest that the Contestors should have requested a date for hearing is nonsense.

Plaintiffs-Appellants urge that the application of the rules laid down in the *Jenkins* and *McCall* cases to the case at Bar have denied them equal protection of the Law and have nothing to do with the inaugurating of the contest nor with the jurisdiction of the Court. In the case at bar the following are the essential facts:

(1) That the Petition was correctly filed;
(2) That service was had on the Defendants;
(3) That all Defendants filed answers;

(4) That within 15 days of the filing of the Petition, Motions were filed by the Plaintiffs-Appellants to take deposition, which announced, of record, that the case was not ready for trial!

These motions should have resulted in the Court inquiring into a suitable trial date based on the time required to take those depositions.

Even if those Motions did not exist the holding by the Trial Judge that: "The Requirements of Section 3515.10 of the Revised Code, requiring the matter be set for hearing not less than 15 nor more than 30 days after filing of the Petition has not been complied with and that the Court therefore has no jurisdiction to hear the contest" was plainly discriminatory to Plaintiffs-Appellants, considering the facts.

(See Entry Appendix)

Where in the statute is there any language requiring that anyone request the Court to set the case? Isn't it presumptuous for Plaintiffs to assume that the Court will disregard its statutory duty? In the instant case, request was made by the Plaintiffs-Appellants to set this case for hearing on January 9, 1968, at which time the Motions to take deposition were on the docket for hearing and which setting had been made known previously to all parties.

2. Section 21, Article 2 of the Ohio Constitution of 1851 gives the General Assembly the power to determine in what manner elections may be contested. Pursuant hereto, the Legislature has seen fit to adopt statutes for that purpose (Section 3515.08 through and including Section 3515.16). The Courts in Ohio have held that the power conferred is not judicial within the meaning of Section 1, Article 4 of the Ohio Constitution. The cases are filed with, heard by and decided by the Judiciary.

Counsel was taught that if an animal looked like a duck, walked like a duck and quacked like a duck, it was a duck.

The right to contest an election is not a natural right but exists under constitutional or statutory provisions; *State ex rel. Schriver* v. *Hayes,* 148 O.S. 681; *29 Corpus Juris Secundum, "Elections," Section 247.* These statutes must be strictly construed. *McCall* v. *Board of Education,* 169 O.S. 50, *29 Corpus Juris Secundum, "Elections," Section 247.* A contested election is a case in which the public has an interest and is in the public good. *29 Corpus Juris Secundum, "Elections," Section 247.*

Such statutes must be strictly construed or observed as to those provisions for inaugurating the contest and which are necessary to jurisdiction, *29 Corpus Juris Secundum, "Elections," Section 247.*

However, a mere technicality should never thwart the inherent and basic purpose of the proceedings, *29 Corpus Juris Secundum, "Elections," Section 247.*

Judicial Tribunals are provided for equal protection of every litigant. *Hocking Valley Coal Co.* v. *Rosser,* 53 O.S. 12.

A statutory discrimination will not be set aside if any state of facts may be conceived to justify it; *McGowen* v. *Maryland,* 366 U.S. 420. It would appear logically that a rule of law enunciated by a Court construing a statute which discriminates against any party must be set aside if no state of facts may be conceived to justify it.

The Supreme Court of the United States has jurisdiction to review cases arising in the individual states where the question of deprivation of Federal Constitutional rights is involved. *Bond, et al.* v. *Floyd, et al.,* 385 U.S. 116; *Williams, et al.* v. *Rhodes,* 21 L.Ed. 2nd 24, decided October 27, 1968.

This Court also held in the *Williams* case that no state can pass a law regulating elections that violates the Fourteenth Amendment to the United States Constitution's command that "No State shall . . . deny to any person . . . the equal protection of the Laws."

These Appellants also urge that no State Court may adopt a rule of law which denies to any person the equal protection of the Laws. Appellants urge that the rule of law enunciated by the Supreme Court of Ohio, as applied to this case by the trial Court, denies Appellants the equal protection of the law.

The holding in this case is fraught with legal and constituitonal dangers. Can we seriously and constitutionally maintain that thirty-four (34) American voters are deprived of having an election contest litigated because *One* Judge failed to carry out a statutory duty within the time prescribed. Can we seriously maintain that this is equal protection of the Law? To give the Trial Court the power to set a case, and particularly an election contest case, and thereby cause one of the parties to lose, if the Court fails to do so, is not equal protection of the Law. On the contrary, this is repugnant to our whole system of justice.

Respectfully submitted,

MORRIS G. SULLIVAN &
HARRY HOWARD
901 Atlas Bank Building
Cincinnati, Ohio 45202
Attorney for Plaintiffs-Appellants

APPENDICES

APPENDIX A

STATE OF OHIO
HAMILTON COUNTY
COURT OF COMMON PLEAS

NO. A228791

WALTER J. ABRAMS,
3748 Applegate Ave., Cheviot, Ohio,
[Remaining list of plaintiff-contestors not reproduced herein as part of caption],
Plaintiff-Contestors,

vs.

JOHN A. WIETHE, Chairman of the Board of Elections of Hamilton County, Ohio,

GEORGE C. EYRICH, JR., Member of the Board of Elections of Hamilton County, Ohio,

SIDNEY WEIL, JR., Member of the Board of Elections of Hamilton County, Ohio,

WILLIAM H. KREIDLER, Member of the Board of Elections of Hamilton County, Ohio,

CONSTITUTING THE BOARD OF ELECTIONS OF HAMILTON COUNTY, OHIO,
622 Sycamore Street, Cincinnati, Ohio,

and

DONALD P. BENNETT,
3467 Alta Vista, Cheviot, Ohio,
Defendants-Contestees.

PETITION

(Filed December 5, 1967)

Now come Plaintiff-Contestors and state that on or about November, 1967, the general election for various offices in the City of Cheviot, Hamilton County, Ohio was held and that included therein was the office of Mayor of the City of Cheviot, Hamilton County, Ohio. Plaintiffs-Contestors also state that John A. Wiethe, George C. Eyrich, Jr., Sidney Weil, Jr., were at all times set forth herein, together with William Kreidler, members of and constituted the Board of Elections of Hamilton County, Ohio and as such counted the votes cast in said General Election and declared the winners therein including the winning candidate for the office of Mayor and that they have or will issue certificates of election to the various candidates including Donald P. Bennett.

Plaintiffs-Contestors further state that they were at all times set forth herein residents and qualified electors in the City of Cheviot, a Municipal Corporation, located in the County of Hamilton and the State of Ohio. Plaintiff-Contestors further state that Cameron W. Bommer was the duly nominated candidate of the Democratic Party of Hamilton County, Ohio, for the office of Mayor of the City of Cheviot, Hamilton County, Ohio, in the general election held on November 7, 1967, and that Donald P. Bennett, Defendant-Contestee, was the duly nominated candidate of the Republican Party of Hamilton County, Ohio, for the office of Mayor of the City of Cheviot, Hamilton

County, Ohio, in said election, and that these Plaintiff-Contestors voted for or against these two candidates in said general election held on November 7, 1967.

Pursuant to the official tabulation conducted by the Board of Elections for Hamilton County, Ohio, Donald P. Bennett was declared by the said Board of Elections to have won the office of the Mayor of Cheviot, Ohio, officially on or about the 20th day of November, 1967, and the said Board of Elections of Hamilton County, Ohio, declared the said Donald P. Bennett, Defendant-Contestee, to be elected.

Plaintiff-Contestors further state that on or about the 25th day September, 1967, Defendant-Contestee, Donald P. Bennett, at a meeting of the Cheviot Republican Club held at the Cheviot Memorial Field House in the City of Cheviot, Hamilton County, Ohio, promised that if he were elected to the office of Mayor of the City of Cheviot, that he would donate the sum of One Thousand ($1,000.-00) Dollars of his first year's salary as Mayor to the City Recreation Commission of the City of Cheviot, Hamilton County, Ohio, to inaugurate a Golden Age Club in the City of Cheviot.

Plaintiff-Contestors state that the Recreation Commission of the City of Cheviot consisted at that time of five persons, being George Hauck, Arthur Biersdorfer, Lee Lutz, Kenneth Haubrock and Franklin Schaefers, and that this promise was made to both these persons and all electors being persons of the City of Cheviot, Hamilton County, Ohio.

Plaintiffs-Contestors further state that by reason of the aforesaid promise, Defendant-Contestee, Donald P. Bennett, did promise to give, offer or procure money, being a valuable consideration, to another person, in violation of the law of the State of Ohio, and that by reason thereof he

has forfeited the office to which he was elected on or about the 7th day of November, 1967, to-wit: the office of Mayor of the City of Cheviot, Hamilton County, Ohio.

WHEREFORE, Plaintiffs-Contestors pray this Court for a finding, order and judgment that Donald P. Bennett, Defendant-Contestee, has, by reason of his acts, forfeited the office to which he was elected as Mayor of the City of Cheviot, Hamilton County, Ohio, and for an order directed against the Members of the Board of Elections of Hamilton County, Ohio, directing them to declare this office forfeited and vacant, and to cancel his certificate of election, if issued, and for all other and further relief to which they may be entitled in the premises, and their costs herein expended.

/s/ HARRY C. HOWARD
[and 33 other signatures not shown here]
Plaintiffs-Contestors.

/s/ MORRIS G. SULLIVAN
Morris G. Sullivan, Attorney at Law
901 Atlas Bank Bldg., Cinti, Ohio.
Attorney for Plaintiffs-Contestors

[Certification and Praecipe]

APPENDIX B

COURT OF COMMON PLEAS
HAMILTON COUNTY
STATE OF OHIO

(CAPTION OMITTED)

ANSWER OF DEFENDANTS, JOHN A. WIETHE, GEORGE C. EYRICH, JR., WILLIAM H. KREIDLER, SIDNEY WEIL, JR., AS MEMBERS OF AND CONSTITUTING THE BOARD OF ELECTIONS OF HAMILTON COUNTY, OHIO.

(Filed December 15, 1967)

Now come defendants John A. Wiethe, George C. Eyrich, Jr., Sidney Weil, Jr., and William H. Kreidler, as members of and constituting the Board of Elections of Hamilton County, Ohio, and answer to the petition filed herein as follows:

Defendants admit that they are all members of, and constitute, the Board of Elections of Hamilton County, Ohio, and that they were members of, and constituted, said Board at all times mentioned in the petition filed herein.

Further, defendants admit that a general election was held on or about November 7, 1967, for various offices in the City of Cheviot, Hamilton County, Ohio, and that one of the offices included in said election was that of Mayor of the City of Cheviot, Hamilon County, Ohio.

Further, defendants admit that Cameron W. Bommer was the duly nominated candidate of the Democratic Party

of Hamilton County, Ohio, for the office of Mayor of the City of Cheviot, Hamilton County, Ohio, in the general election held on November 7, 1967, and that Donald P. Bennett was the duly nominated candidate of the Republican Party of Hamilton County, Ohio, for the office of Mayor of the City of Cheviot, Hamilton County, Ohio, in said election and that pursuant to the official tabulation conducted by the Board of Elections for Hamilton County, Ohio, that said Donald P. Bennett was declared by the said Board of Elections to have won the office of the Mayor of Cheviot, Ohio, officially, on or about the 20th day of November, 1967, and the said Board of Elections of Hamilton County, Ohio, has declared the said Donald P. Bennett to be elected and to be entitled to a certificate of election.

Further, defendants deny for want of knowledge each and all allegations contained in plaintiff's petition which are not specifically admitted herein to be true.

WHEREFORE, defendants pray that they go forth with their costs and without day.

.....

Melvin G. Rueger
Prosecuting Attorney

/s/ JOHN A. GEHRIG
John A. Gehrig
Ass't. Prosecuting Attorney
[address given]

[Certification]

APPENDIX C

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

(CAPTION OMITTED)

ANSWER

(Filed December 15, 1967)

Now comes the defendant-contestee, Donald P. Bennett, and for his answer admits that on or about November 7, 1967, a general election for various offices in the City of Cheviot, Hamilton County, Ohio, was held and that included therein was the election for the office of Mayor of the City of Cheviot, Hamilton County, Ohio; that the defendants, John A. Wiethe, George C. Eyrich, Jr., Sidney Weil, Jr., and William H. Kreidler were members of and constituted the Board of Elections of Hamilton County, Ohio, and as such declared Donald P. Bennett the winning candidate for the office of Mayor of the City of Cheviot and that the Board of Elections has issued to Donald P. Bennett a certificate evidencing his election to said position.

The defendant, Donald P. Bennett, further answering admits that Cameron W. Bommer was the duly nominated candidate of the Democratic Party of Hamilton County, Ohio, and that Donald P. Bennett was the duly nominated candidate of the Republican Party of Hamilton County, Ohio for the office of Mayor of the City of Cheviot, Hamilton County, Ohio, in the general election held on November 7, 1967.

The defendant, Donald P. Bennett, further answering,

denies, for want of knowledge, that the plaintiffs-contestors were at all times set forth in the petition residents and qualified electors in the City of Cheviot, a municipal corporation, located in the County of Hamilton and the State of Ohio, and that the plaintiffs-contestors voted for, or against, Cameron W. Bommer or Donald P. Bennett in the general election held on November 7, 1967.

Further answering, the defendant, Donald P. Bennett, denies that on or about the 25th day of September, 1967, at a meeting of the Cheviot Republican Club, held at the Cheviot Memorial Field House, in the City of Cheviot, Hamilton County, Ohio, he promised that if he were elected to the office of Mayor of the City of Cheviot that he would donate the sum of One Thousand ($1,000.00) Dollars of his first year's salary as Mayor to the City Recreation Commission of the City of Cheviot, Hamilton County, Ohio, to inaugurate a Golden Age Club in the City of Cheviot, and further denies that such a promise was made to the five (5) persons named in the petition as members of the Recreation Commission, or to all of the electors of the City of Cheviot, Hamilton County, Ohio.

Further answering, the defendant, Donald P. Bennett, denies each and every allegation in plaintiffs' petition not hereinbefore admitted to be true or specifically denied.

WHEREFORE, the defendant, Donald P. Bennett, having fully answered, prays the Court for a dismissal of the plaintiffs-contestors' petition, for his costs and for other relief to which he may be entitled.

SMITH AND LATIMER
By
Lyle W. Castle
Attorneys for Defendant, Donald P. Bennett

[Certification]

APPENDIX D

STATE OF OHIO
COUNTY OF HAMILTON
COURT OF COMMON PLEAS

(CAPTION OMITTED)

MOTION

(Filed December 20, 1967)

Now come Plaintiffs-Contestors and move this Court for an order to take the deposition of the following witness in this cause whose testimony is vital to this cause, to-wit:

Robert Sauer, 3714 Harding Ave., Cheviot, Ohio.

Plaintiffs-Contestors state that the said Richard Sauer was the Campaign Chairman for Donald P. Bennett, Defendants-Contestee, during his candidacy in 1967, for the office of Mayor of the City of Cheviot, Hamilton County, Ohio.

.....

Morris G. Sullivan,
Attorney for Plaintiff-Contestors.

APPENDIX E

STATE OF OHIO
COUNTY OF HAMILTON
COURT OF COMMON PLEAS

(CAPTION OMITTED)

MOTION

(Filed December 20, 1967)

Now comes Plaintiffs-Contestors and move this Court for an Order permitting them to take the deposition of Contestee, Donald P. Bennett, as if on cross-examination and to set a date, time and place therefor.

Plaintiffs-Contestors further pray this Court for an Order permitting them to take the depositions of the following officers of the Cheviot Republican Club which is located in the City of Cheviot, Hamilton County, Ohio:

Donald L. Kellar, President — 3476 Alta Vista, Cheviot, Ohio

Louis Thiemann, Recording Sec'y — 3944 Kenkel Ave., Cheviot, O.

Charles D. Zimmerman, 1st Vice Pres. — 3413 Tangent Dr., Cheviot, O.

William Anderson, 2nd Vice Pres. — 3809 Applegate Ave., Cheviot, O.

Theodore Cochran, Treasurer — 3882 Taft Ave., Cheviot, O.

Plaintiffs-Contestors state that the testimony of these witnesses is vital to the case of Plaintiffs-Contestors and must be preserved.

/s/ MORRIS G. SULLIVAN
Morris G. Sullivan,
Attorney for Plaintiffs-Contestors.

APPENDIX F

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

(CAPTION OMITTED)

MOTION TO DISMISS

(Filed January 9, 1968)

Now comes the defendant-contestee, Donald P. Bennett, by and through his counsel, and moves the Court for a dismissal of the plaintiffs-contestors petition for the reason that the Court does not have jurisdiction to hear this action.

SMITH, LATIMER, DOGGETT AND CASTLE
By
Lyle W. Castle
Attorneys for Defendant-Contestee,
Donald P. Bennett

[Memorandum]

APPENDIX G

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

(CAPTION OMITTED)

ENTRY GRANTING CONTINUANCE

(Filed January 16, 1968)

For good cause shown, at the request of counsel for the defendant-contestee, Donald P. Bennett, the within cause is continued from January 16, 1968 to January 18, 1968, at 2:15 P.M., for further proceedings in connection with the motion to dismiss filed on behalf of defendant-contestee, Donald P. Bennett, and the motion for an order to take depositions filed on behalf of plaintiffs-contestors.

.....

SMITH AND LATIMER
By
Lyle W. Castle
Attorneys for Defendant-Contestee, Donald P. Bennett

.....

Morris G. Sullivan
Attorney for Plaintiffs

APPENDIX H

STATE OF OHIO
COUNTY OF HAMILTON
COURT OF COMMON PLEAS

(CAPTION OMITTED)

MOTION TO RE-HEAR MOTION TO DISMISS

(Filed January 23, 1968)

Now comes Plaintiff-Contestors and move this Court to re-hear the Motion to Dismiss and to reconsider its ruling herein for the following reasons:

(1) That the Plaintiffs-Contestors, on the 20th day of December, 1967, filed a motion to take the depositions of Defendant, Donald P. Bennett, as if on cross-examination and "to set a date, time and place therefor". Plaintiffs-Contestors, by this act, put the Court on notice of the need for promptness and timeliness in taking the deposition with respect to the time within which this Court was required to set this case for trial.

(2) That the act of this Court, in failing to perform its obligation under Section 3515.10 of the Ohio Revised Code, did not terminate the jurisdiction of this Court to hear and determine this cause.

/s/ MORRIS G. SULLIVAN
Morris G. Sullivan, Attorney for Plaintiffs-Contestors

[Memorandum]

APPENDIX I

STATE OF OHIO
COUNTY OF HAMILTON
COURT OF COMMON PLEAS

(CAPTION OMITTED)

ENTRY OVERRULING MOTION TO RE-HEAR MOTION TO DISMISS

This Motion heretofore filed herein by the Plaintiffs-Contestors to Re-Hear the Motion to Dismiss, heretofore heard and granted, is overruled. To which Plaintiffs-Contestors except.

Entered
MAY 20, 1968

APPENDIX J

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

(CAPTION OMITTED)

ENTRY OF DISMISSAL

(Filed May 31, 1968)

This cause came on to be heard on the Motion to Dismiss the Petition filed by the Defendant-Contestee, Donald P. Bennett.

The Court being fully advised in the premises and after due consideration of the oral arguments and memorandums offered by counsel for the parties, finds that the motion to dismiss the petition of the Plaintiffs-Contestors is well taken for the reason that the requirements of Section 3515.10 of the Revised Code, requiring that the matter be set for hearing not less than fifteen (15) nor more than thirty (30) days after the filing of the petition has not been complied with and that the Court therefore has no jurisdiction to hear the contest. This entry is substituted for an entry filed May 25, 1968, and the Clerk is hereby ordered to enter this Entry as of May 25, 1968, and to correct the docket showing that this case was dismissed for a second time on May 28, 1968, and instead will show that this case was dismissed effective May 25, 1968 nunc pro tunc January 18, 1968.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petition of the Plaintiffs-Contestors be dismissed May 25, 1968 nunc pro tunc January 18, 1968,

and that judgment is hereby rendered against the Plaintiffs-Contestors for the costs of this action, to all of which the Plaintiffs-Contestors, by their counsel, take exception. It is also ordered that all other Entries dismissing this action be stricken from the files.

.....

Attorney for Plaintiffs-Contestors

.....

Attorney for Defendants-Contestees

APPENDIX K

STATE OF OHIO
COURT OF COMMON PLEAS
HAMILTON COUNTY

(CAPTION OMITTED)

AMENDED NOTICE OF APPEAL

(Filed May 31, 1968)

This is to notify this Court that the decision of this Court dismissing this action will be appealed to the Ohio Supreme Court. This appeal will be on questions of law and involves a substantial constitutional question and is of great public interest. Further, the order dismissing this case is contrary to law. This is a direct appeal from the Court of Common Pleas for Hamilton County, to the Supreme Court of Ohio, according to law.

/s/ MORRIS G. SULLIVAN
Morris G. Sullivan
Attorney for Plaintiff-Contestors
901 Atlas Bank Building
Cincinnati, Ohio 45202

(Certificate of Service and Praecipe)

APPENDIX L

THE SUPREME COURT OF THE STATE OF OHIO
1968 TERM

To wit: October 23, 1968

No. 68-359

THE STATE OF OHIO,)
)
City of Columbus.)

WALTER J. ABRAMS et al.,
Plaintiffs-Appellants,

vs.

JOHN A. WIETHE et al., BOARD OF ELECTIONS OF HAMILTON COUNTY,
Defendants-Appellees.

MANDATE

To the Honorable COMMON PLEAS COURT
Within and for the County of HAMILTON, Ohio, Greeting:

The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

Appeal dismissed, sua sponte, no substantial constitutional question involved.

THOMAS L. STARTZMAN,
Clerk

..... 19...

.....

..... Deputy

RECORD OF COSTS

Docket Fee ..... $20.00 Paid by Morris G. Sullivan

APPENDIX M

STATE OF OHIO
COUNTY OF HAMILTON
COURT OF COMMON PLEAS

No. A228791

WALTER J. ABRAMS, ET. AL.,
Plaintiffs-Appellants,
vs.
JOHN A. WIETHE, ET. AL.,
Defendants-Appellees.

NOTICE OF APPEAL

(Filed November 12, 1968)

I Notice is hereby given that Walter J. Abrams, ET. AL., the Appellants above named, hereby appeal to the

Supreme Court of the United States from the final judgment of the Supreme Court of Ohio affirming the judgment of the Court of Common Pleas, Hamilton County, Ohio, dismissing the Petition of the Appellants on the Motion of the Defendants-Appellees, filed in the Common Pleas Court to dismiss the Petition of the Plaintiffs-Appellants on May 31, 1968, NUNC PRO TUNC January 18, 1968. This Appeal is taken pursuant to 28 U.S.C. Section 1257. (2).

II The Clerk will please prepare a transcript of the record in this cause for transmission to the Supreme Court of the United States and include in said transcription the following:

A. Petition filed in the Common Pleas Court, Hamilton County, Ohio, on December 5, 1967.

B. Answer of the Defendants as Members of and constituting Board of Elections of Hamilton County, Ohio filed December 15, 1967, in the Common Pleas Court of Hamilton County, Ohio.

C. Answer of the Defendant, by Donald P. Bennett filed December 15, 1967, in the Common Pleas Court of Hamilton County, Ohio.

D. Motions to take deposition filed by the Plaintiff on December 20, 1967, in the Common Pleas Court of Hamilton County, Ohio.

E. Motion to dismiss the Petition filed by the Defendant, Donald P. Bennett, filed January 9, 1968, in the Common Pleas Court of Hamilton County, Ohio.

F. Entry granting continuance to the Defendant, Donald P. Bennett, entered January 16, 1968, in the Common Pleas Court of Hamilton County, Ohio.

G. Motion to rehear Motion to dismiss filed December 20, 1968, in the Court of Common Pleas, Hamilton County, Ohio.

H. Entry overruling Plaintiff's Motion to rehear Motion to dismiss filed May 20, 1968, in the Court of Common Pleas of Hamilton County, Ohio.

I. Entry of dismissal filed May 31, 1968, NUNC PRO TUNC January 20, 1968, in the Court of Common Pleas, Hamilton County, Ohio.

J. Amended Notice of Appeal filed on May 31, 1968, in the Court of Common Pleas Court, Hamilton County, Ohio.

K. Order of the Supreme Court of Ohio dismissing Plaintiffs-Appellants Appeal from the Court of Common Pleas of Hamilton County, Ohio, to it entered on or about October 23, 1968.

L. Mandate of the Supreme Court of Ohio of October 23, 1968, to the Court of Common Pleas of Hamilton County, Ohio, ordering the judgment of affirmance to be executed.

III The following question is presented by this Appeal.

1. Does the action of the Court dismissing an election contest where the Plaintiffs-Appellants have done all acts required of them by statute to cause the Court to obtain jurisdiction and have not acquiesced in any continuances or filed and dilatory pleadings for the sole reason that the Court failed to set the election contest within 30 days as prescribed by Section 3515.10 of the Ohio Revised Code deprive Plaintiffs-Appellants of their rights under Section 2, Article 1 of the Bill of Rights of the Constitution of Ohio, 1851, by means of depriving them of equal protection

of the law as guaranteed in the Fourteenth Amendment of the Constitution of the United States?

MORRIS G. SULLIVAN
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Cincinnati, Ohio 45202
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APPENDIX N

In The

SUPREME COURT OF OHIO

No. 68-359

WALTER J. ABRAMS, ET. AL.,
Plaintiffs-Appellants,

vs.

JOHN A. WIETHE, ET. AL.,
Defendants-Appellees.

NOTICE OF APPEAL

I Notice is hereby given that Walter J. Abrams, ET. AL., the Plaintiffs-Appellants above named, hereby appeal to the Supreme Court of the United States the final judg-

ment of the Supreme Court of Ohio affirming the judgment of the Court of Common Pleas, Hamilton County, Ohio, dismissing the Petition of the Appellants on the Motion of the Defendants-Appellees, filed in the Common Pleas Court to dismiss the Petition of the Plaintiffs-Appellants on May 31, 1968, NUNC PRO TUNC January 18, 1968. This Appeal is taken pursuant to 28 U.S.C. Section 1257 (2).

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of the law as guaranteed in the Fourteenth Amendment of the Constitution of the United States?

/s/ MORRIS G. SULLIVAN
MORRIS G. SULLIVAN
Attorney for Plaintiffs-Appellants
901 Atlas Bank Building
Cincinnati, Ohio 45202
Area Code 513 621-4338

APPENDIX O

FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deny any person of life, liberty or property without due process of law; or deny to any person within its jurisdiction the equal protection of the laws."

ARTICLE 1, OF THE BILL OF RIGHTS OF THE CONSTITUTION OF THE STATE OF OHIO, 1851:

"All political power is inherent in the people. Government is instituted for their equal protection and benefit. They have the right to alter, reform or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, and may not be altered, revoked or repealed by the General Assembly."

APPENDIX P

STATUTES

OHIO REVISED CODE:

[CONTEST]

§ 3515.08 Contest of election. (GC § 4785-166)

The nomination or election of any person to any public office or party position or the approval or rejection of any issue or question, submitted to the voters, may be contested by qualified electors of the state or a political subdivision.

In the case of an office to be filled or an issue to be determined by the voters of the entire state, or for the offices of members of congress, or for judicial offices higher than that of court of common pleas, or for an office to be filled or an issue to be determined by the voters of a district larger than a county, said contest shall be heard and determined by the chief justice of the supreme court or a justice of the supreme court assigned for that purpose by the chief justice; except that in a contest for the office of chief justice of the supreme court, such contest shall be heard by a justice of such court designated by the governor.

In the case of all other offices or issues, except judicial offices, such contests shall be heard and determined by a judge of the court of common pleas of the county in which the contest arose. In the case of a contest for a judicial office within a county, such contest shall be heard by the court of appeals of the district in which such county is located. If any contestant alleges prejudice on the part of the judges of the court of appeals or the court of common pleas, assigned to hear such appeal, then the chief justice

of the supreme court, upon application of any such contestants and for good cause shown, may assign judges from another court to hear such contest.

§ 3515.09 Filing contest petition. (GC § 4785-167)

A contest of election shall be commenced by the filing of a petition with the clerk of the appropriate court signed by at least twenty-five voters who voted at the last election for or against a candidate for the office or for or against the issue being contested, or by the defeated candidate for said nomination or election, within fifteen days after the results of any such nomination or election have been ascertained and announced by the proper authority, or if there is a recount, within ten days after the results of the recount of such nomination or election have been ascertained and announced by the proper authority. Such petition shall be verified by the oath of at least two such petitioners, or by the oath of the defeated candidate filing the petition, and shall set forth the grounds for such contest.

Said petition shall be accompanied by a bond with surety to be approved by the clerk of the appropriate court in a sum sufficient, as determined by him, to pay all the costs of the contest. The contestor and the person whose right to the nomination or election to such office is being contested, to be known as the contestee, shall be liable to the officers and witnesses for the costs made by them respectively; but if the results of the nomination or election are confirmed or the petition is dismissed or the prosecution fails, judgment shall be rendered against the contestor for the costs; and if the judgment is against the contestee or if the results of the nomination or election are set aside, the county shall pay the costs as other election expenses are paid.

§ 3515.10 Court shall fix time for trial. (GC § 4785-168)

The court with which a petition to contest an election is filed shall fix a suitable time for hearing such contest, which shall be not less than fifteen nor more than thirty days after the filing of the petition. Such court shall have a copy of the contestor's petition served upon the contestee or upon the chairman of the committee taking the other side in advocacy of or opposition to any issue, in the same manner as a summons in a civil action. The contestee shall have ten days from the time service has been made upon him in which to answer the petition, and the contestor shall have five days in which to reply to the answer of the contestee. All parties may be represented by counsel and the hearing shall proceed at the time fixed, unless postponed by the judge hearing the case for good cause shown by either party by affidavit or unless the judge adjourns to another time, not more than thirty days thereafter, of which adjournment the parties interested shall take notice.

§ 3515.11 Trial proceedings. (GC § 4785-169)

The proceedings at the trial of the contest of an election shall be similar to those in judicial proceedings, in so far as practicable, and shall be under the control and direction of the court which shall hear and determine the matter without a jury, with power to order or permit amendments to the petition or proceedings as to form or substance. Such court may allow adjournments for not more than thirty days, for the benefit of either party, on such terms as to costs and otherwise as seem reasonable to the court, the grounds for such adjournment being shown by affidavit. The hearing shall proceed expeditiously and the total of such adjournments shall not exceed thirty days after the date set for the original hearing.

§ 3515.12 Contest of election.

The court with which a petition to contest an election is filed may summon and compel the attendance of witnesses, including officers of such election, and compel the production of all ballot boxes, marking devices, lists, books, ballots, tally sheets, and other records, papers, documents, and materials which may be required at the hearing. The style and form of summons and subpoenas and the manner of service and the fees of officers and witnesses shall be the same as are provided in other cases, in so far as the nature of the proceedings admits. The court may require any election officer to answer any questions pertinent to the issue relating to the conduct of the election or the counting of the ballots and the making of the returns. Any witness who voted at the election may be required to answer touching his qualification as a voter and for whom he voted.

§ 3515.14 Judgment of court. (GC § 4785-171)

Upon completion of the trial of a contest of election, the court shall pronounce judgment as to which candidate was nominated or elected or whether the issue was approved or rejected by the voters; except that in the case of the contest of election of a member of the general assembly such judgment shall not be pronounced by the court but a transcript of all testimony taken and all evidence adduced in such contest shall be filed with the clerk of the branch of the legislative body to which the contestee was declared elected, which shall determine the election and qualification of its own members.

Any person declared nominated or elected by the court shall be entitled to his certificate of nomination or election. A certified copy of the order of such court constitutes such certificate. If the judgment is against the con-

testee or incumbent and he has already received a certificate of nomination or election, the judgment of the court shall work a cancellation of such certificate.

If the court decides that the election resulted in a tie vote, such decision shall be certified to the board of elections having jurisdiction and said board shall publicly determine by lot which of such persons shall be declared elected. If the court find[s] that no persons* was elected, the judgment shall be that the election be set aside.

§ 3515.15 Appeal on questions of law to supreme court. (GC § 4785-172)

The person against whom judgment is rendered in a contest of election may appeal on questions of law, within twenty days, to the supreme court; but such appeal shall not supersede the execution of the judgment of the court. Such appeal takes precedence over all other causes upon the calendar, and shall be set down for hearing and determination at the earliest convenient date. The laws and rules of the court governing appeals apply in the appeal of contested election cases. If the judgment of the lower court is affirmed, the supreme court shall order the judgment of such lower court to be enforced, if the party * * *

§ 3515.16 Testimony in supreme court (GC § 4785-173)

In a contest of election in the supreme court, all testimony shall be in the form of depositions. The contestor shall take and file his testimony within twenty days from the date of filing the petition, unless further time is allowed by the court or judge hearing the contest. The contestee or the committee defending the issue shall file its testimony within twenty days from the expiration of the contestor's time, unless such court or judge allows further time. The

court may render such judgments and make such orders as the law and facts warrant, including judgment of ouster and induction, and the judgment of the supreme court shall be decisive of the contest.

Section 3599.01 Bribery.

No person shall before, during, or after any primary, convention, or election:

(A) Give, lend, offer or procure or promise to give, lend, offer, or procure any money, office, position, place or employment, influence, or any other valuable consideration to or for a delegate, elector, or other person;

(B) Attempt by intimidation, coercion, or other unlawful means to induce such delegate or elector to register or refrain from registering or to vote or refrain from voting at a primary, convention, or election for a particular person, question, or issue;

(C) Advance, pay, or cause to be paid or procure or offer to procure money or other valuable thing to or for the use of another, with the intent that it or part thereof shall be used to induce such person to vote or to refrain from voting.

Whoever violates this section is guilty of bribery and shall be fined not more than one thousand dollars or imprisoned not less than one nor more than three years, or both; and if he is a candidate he shall forfeit the nomination he received, or if elected to any office he shall forfeit the office to which he was elected at the election with reference to which such offense was committed.

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

ABRAMS ET AL. *v.* WIETHE ET AL.

APPEAL FROM THE SUPREME COURT OF OHIO.

No. 961. Decided March 10, 1969.

PER CURIAM.

The appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.